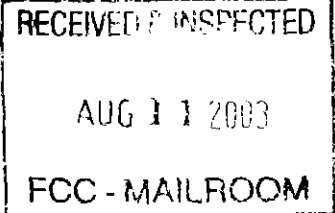


EX PARTE OR LATE FILED

STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

228 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501
(505) 827-6320



BILL RICHARDSON
Governor

ORIGINAL

August 7, 2003

Docket No. 03-128

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S W
WASHINGTON, D C 20554

RE: Draft Nationwide Programmatic Agreement (PA) for Review of Effects on Historic Properties for Undertakings approved by the Federal Communications Commission for Streamlining Section 106 for Certain Communications Undertakings

Dear Commissioner Powell

The State of New Mexico's Historic Preservation Division/State Historic Preservation Officer (NMSHPO) has reviewed the current draft of the proposed PA. We appreciate the hard work and efforts of the FCC, industry and the task force in attempting to develop an agreement to streamline consultation for FCC undertakings. While the PA clarifies the roles of applicants and consultants, provides clear definitions of undertakings, and along with the standardized submittals, has the potential to benefit the FCC, industry and the SHPOs in consultation, we request that the draft PA be revised to take into account the following comments

- To meet the Congressional intent of the National Historic Preservation Act, as amended (NHPA), and Section 106 of the Act, more options are needed to allow state and local concerns to be addressed, and for state and local groups to review projects that have a potential for adversely affecting historic properties, whether formally listed in the National Register of Historic Places or eligible for inclusion in the National Register
- A potential unintended consequence of this agreement could diminish incentives to collocate antennas (from the 2001 Collocation PA)—an agreement that has been effective in its application in New Mexico.
- Many of the exclusions are difficult to understand and will be hard for applicants, consultants and SHPOs to implement in a consistent fashion
- Excluding undertakings from review that are within 200' of a government facility, within 200' of an interstate right-of-way, or in industrial areas, essentially eliminates the protections of NHPA for important historic properties on highway and rail corridors from section 106 review. Many of these areas contain historic

For: [Signature] 076
[Signature]

- properties eligible for inclusion in the National Register of Historic Places. Omitting these locations from review does not streamline the Section 106 process, it effectively eliminates meaningful Section 106 consultation and weakens the NHPA
- The exclusions (especially in §III.A.5) ignore probable adverse effects to broad classes of historic properties such as national historic trails, rural historic landscapes, cultural landscapes and archaeological sites, particularly along interstate highway and rail rights-of-way (ROW). New Mexico interstate highways contain large tracts of undisturbed ROW. Most property adjacent to the ROW is undeveloped and undisturbed land. We have numerous examples under previous NHPA consultation where applicants presume that highway and rail ROW are fully disturbed and any needed treatment or mitigation was completed as part of new highway construction
- §III.5.A FCC needs to define a “right-of-way designated by a government for the location of communication Towers...”
- §III 5 B “An existing limited access Interstate ..” There seems to be an assumption that these areas are already disturbed or impacted, where in reality many interstates parallel little disturbed historic and rural landscapes. We take issue with the “however” provision (1) for the above stated reason. Most older National Register nominations do not define visual elements as being part of the character-defining features of eligibility, but integrity of setting is nonetheless essential in assessing effects to these properties. Under Provision (2); why is it that only National Park System units and National Historic Landmarks are acknowledged? Many state parks and state monuments are associated with a historical site and are visited for their historical association and setting. The same can be said for hundreds of cultural and historic sites managed by the Bureau of Land Management and the U S Forest Service The ¾ mile criteria is limiting, as it has been well established that, depending on the nature of the landscape and viewshed, communications towers can pose an adverse visual effect as far as a mile and half away from a historic resource.
- The PA creates a distinction in protection between properties formally listed in the National Register of Historic Places and properties determined eligible for inclusion in the register (note exceptions for some National Register districts and National Historic Landmarks in §III.A.5). This is completely at odds with the Advisory Council on Historic Preservation’s regulations, 36 CFR 800, and erodes the concept of eligibility for purposes of NHPA consultation. In New Mexico numerous National Register eligible properties have been identified in and adjacent to highway and rail ROW At a minimum the applicant should be required to consider all previously identified NR listed or eligible properties.

NMSHPO strongly endorses NCSHPO’s proposed modification of §III.A.5 to allow individual SHPOs to “opt-out” of the agreement. In a regional meeting of SHPOs (AZ, CA, CO, NM, NV and UT) we discussed the potential of these states to develop a regional protocol for FCC projects. This approach could partially

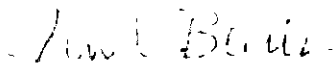
- address industry's concern over the potential for different procedures for each of the 50 states.
- With our vast vistas in the western parts of the U.S., Areas of Potential Effect (APE) can include large areas surrounding national historic trails, rural historic landscapes, cultural landscapes and properties of religious and cultural concerns to Indian Tribes. A one-size-fits-all approach to define APEs as attempted in the draft PA will not work in New Mexico.
- §VI B 1 and 2 (APEs) These criteria of visibility are limiting and do not reflect the topography and open vistas of much of the Western states.
- §VI C 3 (archaeological survey & sites) should be rewritten to require an archaeological survey unless entirely within a previously disturbed or unless the SHPO/THPO issues other guidance appropriate to the resources under their jurisdiction.
- It is incorrect to conclude (§VI C 4, last clause) that no archaeological resources exist unless these resources are in the SHPO/THPO files. NMSHPO estimates that only 10-12% of the state has been inventoried, documenting over 141,000 sites to date. It is our informed opinion that there may be over 1,000,000 archaeological sites in the state. Because of the high probability of identifying archaeological sites, NMSHPO guidance is to survey all APEs unless entirely disturbed or previously surveyed
- §VI E.2. States that applicant should consider "known presence of Historic Properties " This language seems to exclude historic properties that are eligible but have not been listed on the National Register. It states the applicant will consider such factors, but does not provide a methodology for doing so. Past experience has established that many applicants, and/or their consultants, do not have the training or technological wherewithal to analyze visual effect. To streamline review, the FCC should develop a methodology for assessing visual impact that becomes a required component of the Submission Packet. Until these guidelines are developed, Submission Packets will remain to be uneven, reflecting the sophistication, or lack thereof, of the applicant, and/or consultant.
- §VI.E 3 Language of "visual setting or visual elements are character-defining features of eligibility" is limiting and assumes that these characteristics are identified in all National Register nominations. The included examples are also limiting. A schoolhouse situated in an isolated rural setting, could have its setting adversely affected by a nearby cellular, even though its architecture was selected as the prime character-defining feature of the property. Footnote 13 is equally limiting as many single resource nominations have a narrow boundary definition, but could be adversely affected by the presence of a nearby cellular tower.
- We concur with NCSHPO's recommended language requiring consultation for towers greater than 1000'.
- §VII A 4 Why limit industry's submittal to within 60 days? If the applicant needs additional time, they should be afforded the necessary time to address SHPO/THPO comments and resubmit the package

- §1X. Recommend a more explicit definition of “reasonable time” for post-review discoveries. NMSHPO finds 48 hours workable in most cases—particularly with email submittals. Language could be crafted to allow the applicant, SHPO/THPO and Indian tribe to agree to a longer amount of time, dependent on the complexity of the discovery.
- All of the cultural resource work needs to be conducted by individuals meeting the Secretary of Interior’s Standards for Archeology and Historic Preservation.
- The draft PA usurps the ability of Federal land managers to comment on sensitive and specially protected areas (wilderness, areas of environmental critical concern, etc.).

As the draft is proposed at present we ask that New Mexico be able to opt-out from being covered by the Nationwide PA.

If you have any questions or comments, please feel free to contact me at 505-827-4044

Sincerely,



Katherine Slick
State Historic Preservation Officer